

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ELVIN FERRERA HERNANDEZ,

Defendant.

CASE NO. 8:01CR169

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 33) issued by Magistrate Judge Thomas D. Thalken recommending the denial of the Defendant's motion to dismiss (Filing No. 22). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

FACTUAL BACKGROUND

On August 1, 2001, the Defendant made an initial appearance in this Court on the Indictment. (Filing No. 3.) On August 6, 2001, he was released on conditions of pretrial release. (Filing No. 10.) On August 16, 2001, a petition for action on conditions of pretrial release was filed; an arrest warrant was issued. (Filing No. 11.) The Defendant was arrested in another district on December 28, 2008, and returned to this district. (Filing Nos. 17, 19.) The Defendant seeks an order dismissing this case.

While the Defendant was a fugitive, on March 14, 2002, this Court issued an order requiring that within ten days the government show good cause why the case should not be dismissed without prejudice. Absent a showing of good cause, the order stated that the case “may” be dismissed. (Filing No. 16.) The docket sheet and ECF record do not reflect a response to the Court’s order. The case was not dismissed.

The Defendant moves to dismiss the case (Filing No. 22), arguing that the case should be dismissed “as contemplated” in its March 14, 2002, order.

DISCUSSION

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties’ briefs (Filing Nos. 23, 27) and the transcript of the hearing (Filing No. 36). Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

Judge Thalken noted in his oral findings of fact and conclusions of law that it is the clerk’s practice *not* to file documents captioned “response;” a response showing good cause was sent to the Court from the U.S. Attorney; the Court’s order did not effect an automatic dismissal and stated only that the case “may” be dismissed absent a showing of good cause; and there is nothing in the record showing that the government failed to show good cause. (Filing No. 36, at 9-10.)

IT IS ORDERED:

1. The Magistrate Judge’s Report and Recommendation (Filing No. 33) is adopted in its entirety; and
2. The Defendant’s motion to dismiss (Filing No. 22) is denied.

DATED this 8th day of April, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge